TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 189.

JAMES E. YEATMAN AND JAMES C. MOORE, ASSIGNEES IN BANKRUPTCY OF JAMES J. O'FALLON AND SAMUEL A. HATCH, COMPOSING THE FIRM OF O'FALLON & HATCH, PLAINTIFFS IN ERROR,

VS.

THE NEW ORLEANS SAVINGS INSTITUTION.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED OCTOBER 12, 1875.

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1 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

ROBERT K. WOODS, ASSIGNEE, &C., *vs.* NEW ORLEANS SAVINGS INSTITUTION. } No. 6886.

Petition.—Filed January 18th, 1873.

To the hon. the circuit court of the United States for the fifth judicial circuit & district of Louisiana.

The petition of Robert K. Woods, who is a citizen of the State of Missouri, herein acting as assignee in bankruptcy of O'Fallen & Hatch, respectfully shows, that the commercial copartnership of O'Fallen & Hatch, and the individuals composing said firm, James J. O'Fallen and Samuel A. Hatch, were adjudged bankrupts, as a firm and individually, by the district court of the United States for the eastern district of Missouri, under and in virtue of the act of Congress approved March 2, 1867, entitled "An act to establish a uniform system of bankruptcy
2 throughout the United States," on the 27th day of November, A. D. 1871.

That on the 20th day of May, 1872, your petitioner was duly appointed assignee of said bankrupts' firm, and of its members aforesaid; that on the 20th day of May aforesaid all the property of every description belonging to said bankrupts, or in which they were interested, was by proper deed of assignment conveyed by Lucien Eaten, register in bankruptcy for said district court of Missouri, unto your petitioners as assignee for said partnership and individual bankrupt estates, all of which will more fully appear from a certified copy of said deed herewith filed and made part hereof.

And further, your petitioner shows that the New Orleans Savings Institution, a corporation existing under and in virtue of the laws of Louisiana, domiciled and doing business in said State, in the city of New Orleans, whose members are citizens of the State of Louisiana, is justly and truly indebted to your petitioner in his capacity as assignee in the full sum of seven thousand two hundred (7,200) dollars, with interest thereon at the rate of 8% per annum, from 28th February, 1872, till paid, for this, to wit:

That among the assets properly belonging to the said estate of
3 O'Fallen & Hatch at the time they were adjudicated bankrupts, and conveyed to their assignee, your petitioner as aforesaid, there were ten thousand dollars of the certificates of indebtedness of the State of Louisiana, which are more particularly described in the schedule hereto attached and made part hereof; that said certificates were then in the possession of the said defendant The New Orleans Savings Institution, who have never surrendered same, but who had no title to same.

That in the months of January and February, 1872, Leonard Mathews, who at that time was the duly appointed and qualified receiver of said estate of O'Fallen & Hatch in bankruptcy, with full power and authority from the district court of Missouri aforesaid to demand and take possession of said certificates, and to convert the same into money, came to New Orleans, and after exhibiting his authority to the said defendant's officers demanded and caused to be demanded from defendant the possession of said certificates of indebtedness in order that he might sell and convert them into money.

That on or about the 28th day of February, 1872, said receiver caused a demand to be made of the said defendant for said certificates,
4 and the defendant refused again to restore or surrender said certificates to said receiver, well knowing his authority to make said demand and to receive same.

That at that date said certificates were well worth the sum of seventy-two cents on the dollar in this market, aggregating the sum of seventy-two hundred dollars.

That said defendant constantly and persistently refused, and has always refused, to surrender said certificates to the proper representative of said bankrupt estate, and that he has unlawfully and wrongfully converted the said certificates of indebtedness to her own use.

That by said refusal and converson as aforesaid said estate of O'Fallen & Hatch was damaged in the full sum of seventy-two hundred dollars.

That said defendant has refused and still does refuse to pay over said warrants or their aforesaid value and interest on same, though amicably demanded thereto by petitioner as assignee of said estate.

That the said defendant, therefore, owes the said petitioner in his aforesaid capacity of assignee the full sum of seventy-two hundred dollars and interest thereon from the 28th day of February, 1872,
5 when the defendant wrongfully refused to deliver same to the receiver of said estate and converted them to its own use, and the further sum of five hundred dollars for his attorneys' fees, all of which he still refuses to pay.

Wherefore petitioner prays that said defendant The New Orleans Savings Institution be cited to answer this petition, and be condemned to pay to petitioner, as assignee aforesaid, the sum of seventy-two hundred dollars, and interest at 8% per cent. per annum from February 28th, 1872, till paid, and five hundred dollars atty's fees, in this behalf, and for all costs and general relief.

(Signed) GIVEN CAMPBELL,
Att'y for Pl'ff.

Citation and marshal's return.—Issued January 18th, 1873.

The President of the United States of America to the marshal of the district of Louisiana, greeting:

ROBERT K. WOODS, ASSIGNEE, &C.,
vs.
NEW ORLEANS SAVINGS INSTITUTION. } No. 6886.

You are hereby commanded to summon The New Orleans Sav-
6 ings Institution, whose members are citizens of the State of Louisiana, to comply with the demand of Robert K. Woods, assignee in bankruptcy of O'Fallon and Hatch, and a citizen of the State of Missouri, contained in the petition of, of which a copy accompanies this citation, or to deliver its answer to the same in the office of the clerk of the circuit court of the United States, fifth judicial circuit and district of Louisiana, in the city of New Orleans, in ten days after service hereof, or judgment will be rendered against it by default, which delay is increased one day for every ten miles the defendant's residence is distant from New Orleans, the place where the court is held.

And that you make due return hereof on the first Monday of February, 1873.

Witness the honorable Salmon P. Chase, Chief-Justice of the Supreme Court of the United States of America, at the city of New Orleans, this 18th day of January, A. D. one thousand eight hundred and seventy-three, and of the Independence of the United States of America the 97th year.

[SEAL.] (Signed) F. B. VINOT, *D'y Clerk.*

7 *Marshal's return.*

Received January 21st, 1873, by the U. S. marshal, and on the 23d day of same month and year served a copy of within citation and accompanying petition on the New Orleans Saving' Institution, by handing the same to L. F. Générés, the president of said saving' institution.

New Orleans, Jan. 23rd, 1873.

(Signed) S. W. REED,
D'y U. S. Marshal.

Answer.—Filed February 7th, 1873.

U. S. circuit court, fifth circuit, district of Louisiana.

ROBERT K. WOODS, ASSIGNEE, &C., *vs.* NEW ORLEANS SAVINGS INSTITUTION. } No. 6886.

Now comes defendant The New Orleans Savings Institution, and for answer to the petition of Robert K. Woods, assignee in the above-entitled cause, say they deny all and singular the allegations thereof, except such as are hereinafter specially admitted.

They deny specially the power and authority of Leonard Mathews as alleged.

8 Further answering, they say that they hold two certificates of i'debtedness of the State of Louisiana, Nos. 9 and 11, dated New Orleans, December 12th, 1870, issued to lessees of State penitentiary, p'r O'Fallon & Hatch, each for the sum of five thousand dollars, and endorsed in blank by the payees thereof.

That they acquired the same in due course of business and for a valuable consideration on or about the 22d day of July, 1871, by virtue of a pledge and pawn executed by O'Fallon & Hatch through their duly authorized agent, Alexis Alexander, dated 22d day of July, 1871, to them to secure the payment of a promissory note for the sum of five thousand dollars, dated the 21st day of July, 1871, payable on the 21st January, 1872, with eight per cent. per annum interest after maturity, then delivered to them for a valuable consideration and in due course of business, signed for said O'Fallon & Hatch by their duly-authorized agent, J. E. Kelso, and payable to their own order, and endorsed by the same in blank, which said note is due and unpaid.

9 Wherefore they pray judgment against the said plaintiff with costs.

(Signed) CLARKE, BAYNE & RENSHAW,
For Defen'ts.

Waiver of jury.—Filed May 22d, 1873.

U. S. circuit court.

R. K. WOODS, ASSIGNEE, &C., *vs.* N. O. SAVINGS INSTITUTION. } No. 6886.

SAME
vs.
D'R W. N. MERCER. } No. 6887.

SAME
vs.
J. A. TURNER. } No. 6888.

SAME
vs.
S. SMITH & CO. } No. 6889.

SAME
vs.
L. F. GÉNÉRÉS. } No. 6890.

We agree to waive the jury in these cases, and that the same shall be tried by the court.

(Signed) LEA, FINNEY & MILLER,
For S. Smith & Co.

(Signed) CLARKE, BAYNE & RENSHAW,
For other Defendants.

(Signed) GIVEN CAMPBELL, *Att'y for Pl'ffs.*

10 *Continuance of case.* *Extract from minutes, May 22d, 1873.*

United States circuit court for the fifth circuit and district of Louisiana.
April term, 1873.

NEW ORLEANS, *Thursday, May 22d,* 1873.

Court met pursuant to adjournment. Present, Hon. E. H. Durell, district judge.

R. K. WOODS, ASSIGNEE,
vs.
N. O. SAVINGS INSTITUTION. } No. 6886.

SAME
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D'R W. N. MERCER. } No. 6887.

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vs.
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S. SMITH & CO. } No. 6889.

SAME
vs.
L. F. GÉNÉRÉS. } No. 6890.

In the above cases the attorneys this day filed a stipulation waiving the jury, and agreed to try the causes before the court on Monday, 26th instant, at 11 a. m., for which day they are specially assigned.

11 *Hearing and continuance of case. Extract of minutes, May 26th, 1873.*

R. K. WOODS, ASSIGNEE, &C., *vs.* N. O. SAVINGS INSTITUTION. } No. 6886.

SAME *vs.* D'R W. N. MERCER. } No. 6887.

SAME *vs.* JNO. A. TURNELL. } No. 6888.

SAME *vs.* L. F. GÉNÉRÉS. } No. 6890.

The above cases were called and, by consent of counsel, tried together.
Given Campbell for pl'ff.
Clarke, Bayne & Renshaw for d'f'ts.
When, after hearing the pleadings, evidence, and argument, the further hearing is continued till to-morrow at 11 a. m.

Hearing and submission of case. Extract from minutes, May 27th, 1873.

R. K. WOODS, ASSIGNEE, &C., *vs.* N. O. SAVINGS INSTITUTION. } No. 6886.

SAME *vs.* D'R W. N. MERCER. } No. 6887.

12 SAME *vs.* JOHN A. TURNER. } No. 6888.

SAME *vs.* L. F. GÉNÉRÉS. } No. 6890.

The above cases were resumed, and, after hearing further evidence and argument, the court took time to advise.

Order. Case re-instated and fixed. Extract from minutes, December 9th, 1873. November term, 1873.

NEW ORLEANS, *Tuesday, December 9th*, 1873.

Court met pursuant to adjournment.
Present, Hon. E. H. Durell, district judge.

R. K. WOODS, ASSIGNEE, &C., *vs.* N. O. SAVINGS INSTITUTION. } No. 6886.

SAME
vs.
D'R W. N. MERCER. } No. 6887.

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SAME
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SAME
vs.
L. F. GÉNÉRÉS. } No. 6890.

We agree to waive the jury in these cases, and that the same shall be tried by the court.

(Signed) LEA, FINNEY & MILLER,
For S. Smith & Co.

(Signed) CLARKE, BAYNE & RENSHAW,
For other Defendants.

(Signed) GIVEN CAMPBELL, *Att'y for Pl'ffs.*

10 *Continuance of case.* *Extract from minutes, May 22d,* 1873.

United States circuit court for the fifth circuit and district of Louisiana.
April term, 1873.

NEW ORLEANS, *Thursday, May 22d,* 1873.

Court met pursuant to adjournment. Present, Hon. E. H. Durell, district judge.

R. K. WOODS, ASSIGNEE,
vs.
N. O. SAVINGS INSTITUTION. } No. 6886.

SAME
vs.
D'R W. N. MERCER. } No. 6887.

SAME
vs.
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SAME
vs.
S. SMITH & CO. } No. 6889.

SAME
vs.
L. F. GÉNÉRÉS. } No. 6890.

In the above cases the attorneys this day filed a stipulation waiving the jury, and agreed to try the causes before the court on Monday, 26th instant, at 11 a. m., for which day they are specially assigned.

11 *Hearing and continuance of case. Extract of minutes, May 26th, 1873.*

R. K. WOODS, ASSIGNEE, &C., *vs.* N. O. SAVINGS INSTITUTION. } No. 6886.

SAME *vs.* D'R W. N. MERCER. } No. 6887.

SAME *vs.* JNO. A. TURNELL. } No. 6888.

SAME *vs.* L. F. GÉNÉRÉS. } No. 6890.

The above cases were called and, by consent of counsel, tried together.
Given Campbell for pl'ff.
Clarke, Bayne & Renshaw for d'f'ts.
When, after hearing the pleadings, evidence, and argument, the further hearing is continued till to-morrow at 11 a. m.

Hearing and submission of case. Extract from minutes, May 27th, 1873.

R. K. WOODS, ASSIGNEE, &C., *vs.* N. O. SAVINGS INSTITUTION. } No. 6886.

SAME *vs.* D'R W. N. MERCER. } No. 6887.

12 SAME *vs.* JOHN A. TURNER. } No. 6888.

SAME *vs.* L. F. GÉNÉRÉS. } No. 6890.

The above cases were resumed, and, after hearing further evidence and argument, the court took time to advise.

Order. Case re-instated and fixed. Extract from minutes, December 9th, 1873. November term, 1873.

NEW ORLEANS, *Tuesday, December 9th*, 1873.

Court met pursuant to adjournment.
Present, Hon. E. H. Durell, district judge.

R. K. WOODS, ASSIGNEE, &C., *vs.* N. O. SAVINGS INSTITUTION. } No. 6886.

SAME
vs.
D'R W. N. MERCER. } No. 6887.

SAME
vs.
JNO. A. TURNELL. } No. 6888.

SAME
vs.
S. SMITH & CO. } No. 6889.

SAME
vs.
L. F. GÉNÉRÉS. } No. 6890.

13 Ordered, that the above causes submitted at the last term of the court be re-instated for further argument on the 30th instant, at 11 a. m., and that all parties be notified thereof.

Motion and order case continued.—Extract from minutes, Jan'ry 10th, 1874.

R. K. WOODS, ASSIGNEE, &C.,
vs.
N. O. SAVINGS INSTITUTION. } No. 6886.

SAME
vs.
D'R W. N. MERCER. } No. 6887.

SAME
vs.
JNO. A. TURNELL. } No. 6888.

SAME
vs.
S. SMITH & CO. } No. 6889.

SAME
vs.
L. F. GÉNÉRÉS. } No. 6890.

On the motion of Given Campbell, att'y for plaintiff, ordered, that the above cases be set for further argument on the 16th instant, at 11 a. m., and that the defendant be notified thereof.

Hearing and continuance of case.—Extract from minutes, January 16th, 1874.

14 R. K. WOODS, ASSIGNEE,
vs.
N. O. SAVINGS INSTITUTION. } No. 6886.

SAME
vs.
D'R W. N. MERCER. } No. 6887.

SAME
vs.
JNO. A. TURNELL. } No. 6888.

SAME
vs.
S. SMITH & CO. } No. 6889.

SAME
vs.
L. F. GÉNÉRÉS. } No. 6890.

The above cases were called for re-argument pursuant to order.
Present, Given Campbell, for pl'ff; Finney & Miller, Clarke, Bayne and Renshaw, for defendants.
When, after hearing Given Campbell and H. C. Miller, esq'res, ordered, that the further hearing be continued till the 19th instant, at 11 a. m.

Hearing and submission of case.—Extract from minutes, January 19th, 1874

R. K. WOODS, ASSIGNEE,
vs.
N. O. SAVINGS INSTITUTION. } No. 6886.

SAME
vs.
D'R W. N. MERCER. } No. 6887.

15 SAME
vs.
JNO. A. TURNELL. } No. 6888.

SAME
vs.
S. SMITH & CO. } No. 6889.

SAME
vs.
L. F. GÉNÉRÉS. } No. 6890.

The above causes were resumed, and, after hearing further argument, the court took time to advise.

Judgment.—From judgment-book, March 7th, 1874.

Circuit court of the United States, fifth circuit and district of Louisiana.
November term, 1873.

NEW ORLEANS, *Tuesday, March 3rd*, 1874.

Court met pursuant to adjournment.
Present, Hon. W. B. Woods, circuit judge.
" " E. H. Durell, district judge.

R. K. WOODS, ASSIGNEE,
vs.
NEW ORLEANS SAVINGS INSTITUTION. } No. 6886.

For reasons orally assigned by the court, it is ordered, adjudged, and decreed that judgment be entered for the defendants, with costs.

16 Judgment rendered March 3d, 1874.
Judgment signed March 7th, 1874.
(Signed) E. H. DURELL, *Judge.*

Statement of facts by the court.—Filed June 16th, 1874. Nunc pro tunc as of March 3d, 1874.

ROB'T K. WOODS, ASSIGNEE, &C., *vs.* NEW ORLEANS SAVINGS INSTITUTION. } No. 6886.

This cause came up this day for trial.

Present, Given Campbell, for plaintiff, and Clarke, Bayne & Renshaw, for defendant.

After hearing evidence and argument, and upon counsel filing the waiver of the jury, the court finds the following facts, to wit:

ROBERT K. WOODS, ASSIGNEE, &C., *vs.* NEW ORLEANS SAVINGS INSTITUTION. } No. 6886.

Defendants are holders of two certificates of indebtedness of the State of Louisiana, Nos. 9 and 11, dated December 12th, 1870, each for five thousand dollars, and issued to the lessees of the State penitentiary, and pledged to defendants on the 22d July, 1871, by

17 O'Fallon & Hatch, to secure their promissory note dated July 21st, 1871, payable January 21, 1872, with eight per cent. per annum interest after maturity, payable to their own order and by them endorsed in blank.

That said note was acquired by defendants for a valuable consideration, and in due course of business. That said note remaining unpaid in their hands. That the things pledged are those claimed in plaintiff's petition.

That O'Fallon & Hatch were decreed bankrupts on 27th November, 1871, by the United States district court for the State of Missouri.

That Leonard Mathews was by an ex-parte order appointed receiver, as follows:

United States district court, eastern district of Missouri. In bankruptcy.

IN THE MATTER OF J. O'FALLON AND SAMUEL A. HATCH, bankrupts. } No. 949.

At S't Louis, in said district, Saturday, 2d day of December, A. D. 1871.

This day comes Archie Woods and William H. Mathews, petitioning creditors herein, by their attorneys, Mess'rs Hendershott

18 & Chandler, and present to the court their petition, heretofore filed herein, praying for the appointment of a receiver of the estate and effects of said bankrupts, for the reasons and subject to the terms and conditions in said petition stated.

And the court having considered said petition and being fully advised in the premises, it is ordered that Leonard Mathews, esquire, of the city and county of S't Louis, in said district, be, and he is hereby, appointed

receiver of the estate and effects of the copartnership composed of said James O'Fallon and Samuel A. Hatch, and also of the individual estate and effects of said bankrupts, respectively.

And the said Mathews having filed a bond herein with sureties, approved by the court, in the sum of ten thousand dollars, he is hereby ordered to take possession of the goods, property, and effects of the said bankrupts, both of the said copartnership and of said O'Fallon & Hatch, individually, and the same hold until the further order of this court.

And it is further ordered that until the further orders of this court herein the said receiver be authorized to ask, demand, and re-
19 ceive, from any and all persons from whom the same may be due and owing, any and all sum or sums of money and any and all property of what kind soever belonging to said bankrupts, either as members of said copartnership or individually; also to ask for, demand, and receive any and all books, papers, and accounts of any kind whatsoever belonging to said firm or to said individuals, bankrupts, except such assets, books, papers, and accounts as may be in the possession of Samuel L. James, hereinafter mentioned.

And he is further authorized to make all disbursements necessary for the interests of said estate, especially for the proper keeping of certain valuable live-stock belonging to said bankrupts.

And it is further ordered that the order heretofore made by this court appointing Samuel L. James receiver of the interests of said estate in the State of Louisiana continue in force, and that he report to and act under the said Mathews, receiver, until the further order of this court.

And it is also ordered that said Mathews keep an account of
20 all moneys by him received and expended in any wise pertaining to this estate, in pursuance of this order.

That under that order he came to New Orleans and demanded, on the day of January, 1872, of L. F. Générés, the president of the New Orleans Savings Institution, the unconditional delivery to him of said certificates of indebtedness held by defendants, The New Orleans Savings Institution.

That Générés refused to deliver unless the amount of the aforesaid notes held by defendants was paid to them; but offered to deliver the certificates, or have the same sold, provided the amount of said notes was left in the hands of M'r Carl Kohn, the agent here, to be retained here until proof was filed in the Missouri court.

That on the 27th day of February, 1872, the district court of the United States for Missouri entered the following order:

United States district court, eastern district of Missouri. In bankruptcy.

IN THE MATTER OF JAMES O'FALLON AND Samuel A. Hatch, bankrupts. } No. 949.

21 At S't Louis, in said district, Tuesday, 27th February, A. D. 1872.

This day comes Leonard Mathews, receiver herein, and presents to the court his petitions this day filed herein, praying an order for the sale of the warrants and certificates of indebtedness of the State of Louisiana which have been pledged for debts by said bankrupts, and the court having heard said petition, and being fully advised in the premises, doth order that said Leonard Mathews, receiver aforesaid, be, and he is hereby, authorized and empowered to sell and transfer all such war-

rants and certificates as may be delivered to him for that purpose by the holders thereof, at a price not less than (72) seventy-two per cent. for warrants, and sixty (60) per cent. for certificates, and to receive the proceeds thereof, to be by him held subject to the further order of this court, reserving to said holders the same right of liens upon such proceeds as they may have upon said warrants and certificates, and to have the said proceeds applied, as far as necessary, in payment of their debts, upon due proof and allowance of such debts and securities in this court.

22 That Mathews telegraphed to Carl Kohn as follows:

FEBRUARY 27TH, 1872.

CARL KOHN,
Care Union National Bank, New Orleans:

Court authorizes me to sell all certificates and warrants that the holders may deliver me, at not less than sixty per cent. for certificates and seventy-two per cent. for warrants, I to hold money until creditors prove their claims in this court. Creditors' lien on proceeds of sale in my hands reserved same as the collaterals. Act as my agent to receive and sell in my name. Show this to Smith, Génerés, and Irwin, and ask them to deliver. Promptness necessary.

(Signed) LEONARD MATHEWS,
Receiver of O'Fallon & Hatch.

That this was communicated by Kohn to Génerés, who refused to deliver the said certificates unless so much of the proceeds of sale as would pay the debt due defendants was retained here by Kohn, and upon these terms Génerés represented that defendants would proceed to prove their debt.

That on the 20th day of May, 1872, the plaintiff was appointed and qualified assignee of O'Fallon & Hatch, and received a proper
23 deed of assignment of the bankrupts' assets.

On the 7th day of June, 1872, the following order was entered by the district court of the United States for Missouri:

United States district court, eastern district of Missouri. In bankruptcy.

IN THE MATTER OF JAMES O'FALLON AND Samuel A. Hatch, bankrupts. } No. 949.

At S't Louis, in said district, Friday, 7th June, A. D. 1872.

This day comes Robert K. Woods, assignee of the estate of said bankrupts, by Samuel S. Boyd, his attorney, and, on motion of said attorney, it is ordered by the court that said Robert K. Woods, assignee aforesaid, be, and he is hereby, authorized to appear in the district court of the United States for the district of Louisiana, and in any and all other courts in the State of Louisiana, and take such action with respect to any demands, suits, or applications therein pending or hereafter insti-
24 tuted at the instance of any person or persons whomsoever, as may be necessary, meet, and proper to enable him to defeat any and all attempts to interfere with his rights and duties as assignee aforesaid, or to prevent him from obtaining full, undisturbed, and complete possession and control of the copartnership estate and effects of O'Fallon and Hatch, and also the individual estates and effects of said James J. O'Fallon and Samuel A. Hatch, and to do all and singular that may

be meet and proper to obtain possession and control of all the said estates and effects and books, papers, and documents belonging thereto, and to defeat any interference with his rights and duties as an assignee aforesaid.

And said assignee is hereby authorized and directed to collect all moneys due to the said copartnership and individual estates, and to adjust or compromise all claims to any effects belonging thereto, and to sell at public or private sale any collaterals belonging to said estates said to be pledged for certain demands against said estates, and now in the possession of persons residing in said State of Louisiana, claiming to be creditors of said estates.

The plaintiff visited New Orleans, arriving there on the 17th
25 June, 1872, and remained there till the 22d of same month, on business connected with the collaterals held by the creditors of O'Fallon & Hatch.

He had a copy of the adjudication in bankruptcy, a copy of the appointment as assignee, a copy of the assignment of bankrupts' effects, and a copy of the order of the United States district court in relation to these collaterals.

He saw Générés and showed him all the papers mentioned. He had three or four interviews with Générés while in New Orleans. He demanded of Générés the certificates of indebtedness held by defendants, which plaintiff claimed belonged to the estate of O'Fallon & Hatch, and Générés refused to deliver said certificates unless plaintiff would pay the debt for which defendants claimed they were held as collateral security, which plaintiff declined to do.

That on the 22d of June, 1872, the plaintiff handed to Générés the following document, which he accepted:

NEW ORLEANS, *June 22d*, 1872.

I hereby authorize and empower Louis F. Générés, of this city, to sell for cash on the most advantageous terms, the minimum price,
26 however, to be not under sixty-eight cents on the dollar, all the certificates of indebtedness and warrants of the State of Louisiana pledged by O'Fallon & Hatch to the following parties, to wit: Fifty thousand ($50,000) certificates of indebtedness pledged to D'r W. N. Mercer, to secure a loan of twenty-five thousand, ($25,000,) past due; twenty-five thousand State warrants pledged to John A. Turnell, to secure a loan of twelve thousand five hundred dollars, ($25,000,) past due; ten thousand ($10,000) dollars certificates of indebtedness pledged to New Orleans Savings Institution, to secure a loan of five thousand, ($5,000,) past due; four thousand three hundred and twenty $\frac{72}{100}$ ($4,320.72) dollars certificates of indebtedness pledged to L. F. Générés to secure a loan of twenty-five ($2,500) dollars, past due.

The amount realized from these sales to be deposited with the parties holding the pledges, subject to all rights which they have upon said certificates and warrants, and without predjudice to the rights of either party or of any party claiming surplus until their respective
27 claims have been proved before a register in bankruptcy and allowed, said sales to be made within a reasonable time; M'r Générés to be entitled to a commission of one-fourth of one per cent. on the gross amount of the warrants.

(Signed) ROB'T K. WOODS,
Assignee in Bankruptcy of O'Fallon & Hatch.

That sales could not be made at the limit mentioned in said doc'ment.

That on the 26th day of August, 1872, plaintiff wrote to Génerés, who received the letter, as follows:

S'T LOUIS, *Aug. 26th*, 1872.

L. F. GÉNÉRÉS, Esq.,
New Orleans, L'a:

DEAR SIR: I hereby withdraw the authority which I gave you to sell the Louisiana State warrants held by you and your clients as collateral security for claims vs. O'Fallon & Hatch until the several claims are duly proven before M'r Register Lucien Eaton, of this city, and allowed by him under the bankrupt law, when a price may be agreed upon.

Very truly,

28 (Signed) ROB'T K. WOODS,
Assignee of O'Fallon & Hatch, Bankrupts.

That during December, 1871, and January, 1872, certificates could be sold in the market of New Orleans at fifty cents on the dollar.

That on the 27th day of February, 1872, certificates could be sold at sixty-one cents on the dollar. That during March, 1872, they were worth sixty-five cents on the dollar.

That defendants have not filed proof of their claim against O'Fallon & Hatch with the district court for Missouri, or the register, or assignee.

And now, in consideration of the foregoing facts, it is ordered, adjudged, and decreed that judgment be entered in favor of the defendant, with costs.

(Signed) E. H. DURELL, *Judge.*

Plaintiff's bill of exceptions.—Filed June 16th, 1874, *nunc pro tunc, as of March 3d*, 1874.

29 United States circuit court.

R. K. WOODS, ASSIGNEE OF O'FALLON & HATCH,
vs.
N. O. SAVINGS BANK. } No. 6886.

Be it remembered that at the argument of this cause, after the defendants had offered in evidence without objection the note and act of pledge referred to in his answer filed in this cause, the counsel of the plaintiff moved the court to reject the note and act of pledge aforesaid from consideration, because the said note had never been proved up against the estate of O'Fallon & Hatch in accordance with the bankrupt law, and ought not to be recognized as a debt against said estate in this suit; which motion the court refused, and admitted the same in evidence, to which the plaintiff then and there excepted, and presented this bill of exceptions, and prays that the same may be signed and sealed by the court as of date of March 3rd, 1874.

[L. S.] (Signed) E. H. DURELL, *Judge.*

30 *Motion and order making Yeatman & Moore parties plaintiffs.—Entered and filed April 14th*, 1875. *Extract from the minutes April 14th*, 1875. *November term*, 1874.

NEW ORLEANS, *Wednesday, April 14th*, 1874.

Court met pursuant to adjournment.

Present, Hon. W. B. Woods, circuit judge.

U. S. circuit court, district of La.

R. K. WOODS, ASSIGNEE OF O'FALLON & HATCH, *vs.* NEW ORLEANS SAVINGS INSTITUTION. } No. 6886.

SAME *vs.* D'R W. N. MERCER. } No. 6887.

SAME *vs.* JNO. A. TURNELL. } No. 6888.

SAME *vs.* SAM'L SMITH & CO. } No. 6889.

SAME *vs.* L. F. GÉNÉRÉS. } No. 6890.

On motion of Given Campbell, attorney for plaintiff in aforesaid causes, and upon suggesting to the court that the plaintiff in said suits, Robert K. Woods, died on the 14th of February, 1874, and that
31 James E. Yeatman and James C. Moore, both of Saint Louis, Missouri, were duly appointed and qualified as his successors in the office of assignees of aforesaid bankrupt estates, as will appear from a duly certified copy of the deed of assignment to them from the Hon. Samuel Treat, judge of the United States for the eastern district of Missouri, which deed is herewith filed as Exhibit A, hereto attached,

Ordered, that the said James E. Yeatman and James C. Moore, assignees as aforesaid, be made parties plaintiff herein, instead of said Woods, and that they be authorized to prosecute these suits as plaintiffs.

Deed of assignment, Exhibit A.—Filed April 14th, 1875.

In the district court of the United States for the eastern district of Missouri. In bankruptcy.

IN THE MATTER OF THE COPARTNERSHIP OF O'Fallon & Hatch, and of James J. O'Fallon and Samuel A. Hatch, individually, bankrupts. } No. 949.

32 The court having on this the twenty-fourth day of February, A. D. eighteen hundred and seventy-four, made the following order in the above-entitled matter, to wit:

The death of Robert K. Woods, assignee of the copartnership estates of O'Fallon & Hatch, a copartnership heretofore composed of James J. O'Fallon and Samuel A. Hatch, and assignee also of the individual estates of said O'Fallon & Hatch respectively, having been duly suggested to the court by James E. Yeatman, co-assignee of said estates, it is, on motion of said Yeatman, ordered that James C. Moore be appointed co-assignee of said Yeatman, and that said Yeatman and Moore be, and they are hereby, appointed, confirmed, and approved as assignees of the estates aforesaid so far as the same remain undisposed of.

Now, therefore, know all men by these presents that James E. Yeatman and James C. Moore, of the city of S't Louis, in the county of Saint Louis and State of Missouri, have been duly appointed assignees in said matter.

Now, therefore, I, Samuel Treat, judge of said district court, by
33 virtue of the authority vested in me by the 14th section of an act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, do hereby convey and assign to James E. Yeatman and James C. Moore, assignees aforesaid, so far as the same have been heretofore undisposed of, all the estate, real and personal, of the said copartnership of O'Fallon and Hatch and of the said James J. O'Fallon and Samuel A. Hatch, bankrupts aforesaid, including all the property of whatever kind of which they were possessed, or in which they were interested or entitled to have on the ninth day of September, A. D. 1871, with all their deeds, books, and papers relating thereto, excepting such property as is exempted from the operation of this assignment by the provisions of said section of said act.

To have and to hold all the foregoing premises to the said James E. Yeatman and James C. Moore and their heirs forever. In trust, nevertheless, for the use and purposes with powers, and subject to the
34 conditions and limitations set forth in said act.

In witness whereof I, Samuel Treat, judge of said court, have hereunto set my hand and caused the seal of said court to be affixed this twenty-fourth day of February, A. D. 1874.

[SEAL.] (Signed) SAMUEL TREAT.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I, Joseph H. Clark, clerk of the district court of the United States in and for the eastern district of Missouri, do hereby certify the writing hereto annexed to be a true copy of the deed of assignment to J. E. Yeatman and J. C. Moore in the matter of James J. O'Fallon and S. A. Hatch, bankrupts, in bankruptcy, as fully as the same remains on file and of record in said matter in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office in the city of S't Louis, in said district, this 9th day of April, in the year of our Lord eighteen hundred and seventy-five.

[SEAL] (Signed) JOSEPH H. CLARK,
Clerk of said Court.

35 UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I, Samuel Treat, judge of the district court of the United States in and for the eastern district of Missouri, hereby certify that Joseph H. Clark, whose signature appears to the within certificate, is, and was at the date thereof, the clerk of said court, and that said certificate is in due form.

In witness whereof I hereunto subscribe my name, at office in the city of Saint Louis, in said district, this 9th day of April, in the year of our Lord eighteen hundred and seventy-five.

[SEAL.] (Signed) SAMUEL TREAT.

Motion and order granting writ of error.—Entered and filed April 15th, 1875. Extract from minutes April 15th, 1875.

United States circuit court, fifth circuit and district of Louisiana. November term, 1874.

NEW ORLEANS, *Thursday, April 15th*, 1875.

Court met pursuant to adjournment.
Present, Hon. W. B. Woods, circuit judge.

36 R. K. WOODS, ASSIGNEE, &C., JAMES E. Yeatman and James C. Moore, assignees of O'Fallon and Hatch, substituted,
vs.
NEW ORLEANS SAVINGS INSTITUTION. } No. 6886.

On motion of Given Campbell, att'y for plaintiffs in this cause, and upon suggesting to the court that the said plaintiffs feel aggrieved by the final judgment rendered in said cause against them on the 3d day of March, 1873, and signed on the seventh day of March, 1873, and that they believe there is error to their prejudice in said judgement rendered as aforesaid, and that they desire a writ of error from said judgment, returnable in the Supreme Court of the United States on the second Monday of October next, it is ordered that the said plaintiffs in said suit be allowed a writ of error as prayed for, on giving bond in the sum of five hundred dollars for costs, with good, solvent security.

37 *Bond for writ of error.—Filed April 15th, 1875.*

JAMES E. YEATMAN & JA'S C. MOORE, assignees of O'Fallon & Hatch, plaintiffs in error,
vs.
NEW ORLEANS SAVINGS INSTITUTION, defendants in error. } No. 6886.

Know all men by these presents that we, James E. Yeatman and James C. Moore, assignees of O'Fallon & Hatch and the individual members thereof, James O'Fallon and Samuel A. Hatch, bankrupts, as principals, and William H. Mathews, as surety, are held and firmly bound unto The New Orleans Savings Institution and F. A. Woolfley, clerk of the circuit court of the United States for the fifth judicial circuit and district of Louisiana, in the full and just sum of five hundred dollars, to be paid to the said New Orleans Savings Institution and F. A. Woolfley, clerk of said court, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals and dated this fifteenth day of April, in the year of our Lord one thousand eight hundred and seventy-five.

38 Whereas latetly at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the district of Louisiana, in a suit depending in said circuit court wherein James E. Yeatman & James C. Moore, assignees of O'Fallon & Hatch, are plaintiffs, and The New Orleans Savings Institution defendants, judgment was rendered against the said plaintiffs; and the said plaintiffs having obtained a writ of error, and filed a copy thereof in the clerk's office of the said

circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said New Orleans Savings Institution, citing and admonishing it to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said James E. Yeatman and James C. Moore, assignees of O'Fallon & Hatch, shall prosecute their writ to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

(Sign'd) JAMES E. YEATMAN, [L. S.]
" JAMES C. MOORE, [L. S.]
Assignees of O'Fallon & Hatch.
" W'M H. MATHEWS. [L. S.]

Sealed and delivered in the presence of—
(Sign'd) F. B. VINOT.

Approved.
(Sign'd) W. B. WOODS, *Judge.*

39 *Assignment of errors.—Filed April 16th*, 1875.

U. S. circuit court, district of Louisiana.

ROBERT K. WOODS, ASSIGNEE OF O'FALLON & Hatch, James E. Yeatman and James C. Moore, assignees substituted,
vs.
NEW ORLEANS SAVINGS INSTITUTION.
} No. 6886.

Now comes James E. Yeatman & James C. Moore, assignees of O'Fallon & Hatch, in bankruptcy, made plaintiffs herein, and say there is manifest error in the judgment of the circuit court in said cause, and they assign as errors in said judgment—

1. That upon the pleadings and findings of facts by the judge of said court, sitting as a jury, and the laws of the land, there ought to have been a judgment for the plaintiff as prayed for in his petition in said cause.

2. There was error in the refusal of the court to reject from its consideration the note and act of pledge refer'ed to in the answer of the defendant and stated in the bill of exceptions taken by plaintiff at the trial, and made part of the record herein.

3. Because the court erred in recognizing the defendants as
40 creditors of said estate of O'Fallon & Hatch, they having failed and refused to prove up their debts in bankruptcy.

4. Because, upon the facts found by the court, the property sued for in plaintiff's petition, being the property of the bankrupt estate of said O'Fallon & Hatch, ought by law to have been delivered to the proper officer of the district court of the United States for the eastern district of Missouri by defendant. And the court erred in deciding that the refusal of defendant to deliver to such agent such property, upon proper demand made, was justifiable, and not a conversion of the property, as claimed in petition by defendants.

5. The court erred in admitting the defendants as creditors of said estate, not having proved their debts according to law.

(Signed) GIVEN CAMPBELL,
Att'y for Pl'ffs.

41 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify that the foregoing 40 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had on the trial of the case of Robert K. Woods, assignee, &c., James E. Yeatman and Ja's C. Moore, assignees of O'Fallon and Hatch, bankrupts, versus New Orleans Savings Institution, No. 6886 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 10th day of August, A. D. 1875.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

I, W. B. Woods, United States judge for the district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans, in said district, this 10th day of August, A. D. 1875.

W. B. WOODS, *Judge.*

42 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between James E. Yeatman and James C. Moore, assignees of O'Fallon & Hatch and the individual members thereof composing said firm, to wit, James J. O'Fallon and Samuel A. Hatch, bankrupts, plaintiffs, and The New Orleans Savings Institution, defendant, a manifest error hath happened, to the great damage of the said James Yeatman and James C. Moore, assignees of O'Fallon & Hatch, and the individual members of said firm, bankrupts, as by their complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the said Supreme Court of the United States, this 15th day of April, in the *the* year of our Lord one thousand eight hundred and seventy-five.

[SEAL.] F. A. WOOLFLEY,

Clerk of the United States Circuit Court for the District of Louisiana.

(Indorsed:) United States circuit court. No. 6886. James E. Yeatman & Ja's C. Moore, assignees of O'Fallon & Hatch, plaintiffs in error, versus New Orleans Savings Institution, defendant in error. Writ of error. Filed April 15, 1875. F. B. Vinot, d'y cl'k.

43 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to the New Orleans Savings Institution, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein James E. Yeatman and James C. Moore, assignees of O'Fallon and Hatch and the individual members thereof composing said firm, to wit, James J. O'Fallon and Samuel A. Hatch, bankrupts, are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this 15th day of April, in the year of our Lord one thousand eight hundred and seventy-five.

W. B. WOODS, *Judge.*

(Indorsed:) United States circuit court. No. 6886. Ja's E. Yeatman & Ja's C. Moore, assignees of O'Fallon & Hatch, pl'ffs in error, vs. New Orleans Savings Institution, defendants in error. Citation.

Marshal's return.

Received Apr. 16, 1875, by the U. S. marshal, and on the 19th day of April, 1875, served a copy hereof on the New Orleans Savings Institution, defendant in error, by handing it to L. F. Générés, the president of said New Orleans Savings Institution, in person in this city.

New Orleans, May 11, 1875.

S. W. REED,
D'y U. S. Marshal.

44 S. W. Reed, sworn, says: I am a deputy U. S. marshal, and made service of the within citation as stated in my return hereon.

S. W. REED,
D'y U. S. Marshal.

Sworn and subscribed before me this 11th day of May, 1875.

F. B. VINOT,
U. S. Comm'r.

(Indorsement on cover:) No. 189. James E. Yeatman & James C. Moore, assignees in bankruptcy of James J. O'Fallon & Samuel A. Hatch, composing the firm of O'Fallon & Hatch, plaintiffs in error, vs The New Orleans Savings Institution. Louisiana C. C. U. S. Filed 12th October, 1875.

Supreme Court of the United States,

March Term, 1877.—No. 189.

JAMES E. YEATMAN & JAMES C. MOORE, Assignees in Bankruptcy of O'Fallon & Hatch,

vs.

THE NEW ORLEANS SAVINGS INSTITUTION.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES, DISTRICT OF LOUISIANA.

GIVEN CAMPBELL,
Attorney for Appellants.

ST. LOUIS:
C. R. BARNS, BOOK AND JOB PRINTER, 215 PINE STREET.
1877

Supreme Court of the United States.

October Term, 1877.—No. 189.

JAMES E. YEATMAN & JAMES C. MOORE, Assignees in Bankruptcy of O'Fallon & Hatch.

vs.

THE NEW ORLEANS SAVINGS INSTITUTION.

Appeal from the Circuit Court of the United States, District of Louisiana.

THE PLEADINGS STATED.

On the 18th of January, 1873, Robert K. Woods, Assignee in bankruptcy of James J. O'Fallon and Samuel A. Hatch, and of the firm of O'Fallon & Hatch, bankrupts under a decree of the District Court of the United States for the Eastern District of Missouri, filed his petition in the Circuit Court for the District of Louisiana, for the recovery of $7,200, the value of two certificates of indebtedness, which he alleged were, at the date of the adjudication in bankruptcy, the property of the bankrupts, and passed by assignment to him; that at the time they were in possession of the New Orleans Savings Institution, the defendant, who had no title to them; that possession had been demanded from the defendant on several occasions by a receiver appointed by the Missouri Court, and by plaintiff, and possession was refused; but defendant unlawfully converted them, to the damage of the plaintiff in the sum of $7,200, their value at the date of conversion with prayer for judgment and *general relief*.

To this the defendant answered admitting the possession of the two certificates of indebtedness of the State of Louisiana described in the petition, but alleging that it held them as pledgee, under a pledge from O'Fallon & Hatch of date 22d July, 1871, to secure a note of same parties, dated July 21, 1871, due January 21, 1872: that the note and pledge were taken for value in due course of business, and asked for judgment.

Upon the trial a jury was waived and the cause tried by the court, who, upon the facts found, rendered judgment for defendant. Subsequently, Robert K. Woods died, and the present plaintiffs were made parties plaintiff.

The facts are meegrely stated in the finding of the court and the only controversy is upon the law of the case.

THE ASSIGNMENT OF ERRORS AND GROUNDS UPON WHICH A REVERSAL OF THE DECREE SHOULD BE HAD, AND A DECREE IN FAVOR OF PLAINTIFFS RENDERED IN THIS COURT.

1. That upon the pleadings and finding of facts by the court, and the law judgment ought to have been rendered for plaintiff in said cause.

2. The court erred in overruling the motion of plaintiff for the rejection from the consideration of the court of the note and pledge mentioned in the bill of exceptions, and in admitting defendant as a creditor of said estate before it had proved its debt in bankruptcy.

The facts as found by the court may be briefly stated as follows: O'Fallon & Hatch were adjudged bankrupt November 27, 1871. Previously they had borrowed money from the defendant and pledged the certificates to secure their note due January 21, 1872, for $5,000. After this Leonard Mathews was appointed receiver of the estate of the bankrupts by Judge Treat, of the District Court of Missouri. Under that appointment he went to New Orleans, Louisiana, the domicil of defendant, and demanded of Generes, the president of the bank, the certificates, which were refused. This was in January, 1872.

That subsequently, on the 27th day of February, after the maturity of the note held by the defendant, the District Court at St. Louis, upon the petition of the receiver, made another order

authorizing and empowering him to sell and transfer all such warrants and certificates as might be delivered to him, at a price not less than 72 per cent. for warrants and 60 per cent. for certificates, and receive the proceeds, to be held by him subject to the order of the Court, and reserving to the holders all liens upon the proceeds upon due proof of their debts.

On the same day the receiver notified the defendant of this order to sell, and demanded the possession of the certificates. Defendant refused to deliver, unless enough of the proceeds to pay its debt were left in the hands of one Kohn, in Louisiana. If this were done it agreed to deliver and prove its debt. This was not done. The certificates on that day were worth on the market 61 per cent., and during March, 1872, were worth on the market 65 per cent.

On the 20th of May Robert K. Woods was appointed assignee. On the 7th of June, 1872, the District Court at St. Louis, Mo., authorized and directed him to sell at public or private sale any collaterals belonging to the estates he represented, said to be pledged and in possession of persons in Louisiana claiming to be creditors of the bankrupts. The assignee came to New Orleans and demanded of defendant the collaterals, which defendant refused to deliver unless the assignee would pay his note, which the assignee refused to do. Then the assignee authorized Generes, who was a broker, to sell the collaterals at not less than 68 per cent. on certificates of indebtedness, and this sale could not be made, and on August 26, 1872, this was revoked. Defendant never proved its claim.

POINTS OF LAW AND CITATION OF AUTHORITIES.

FIRST. *The filing of the petition in bankruptcy at once brings the property of the insolvent into the bankruptcy court, and places it in its custody and under its protection as fully as if actually brought into the visible presence of the Court.*

This proposition was affirmed under the act of 1841—see Houston vs. City Bank of New Orleans, 6 Howard 486. Norton's Assignees

vs. Boyd, 3 Howard 426,—and such is the doctrine of the court of the country under the present law.

See *In re* Sacchi 6. National Bankrupt Reporter, p. 498.
In re Davis vs. Anderson, 6 N. B. R. 150.
In re Brinkman, 7 N. B. R. 425.

Again, the leading object of the law is the speedy and equal distribution of the bankrupt estate among his creditors.

See Avery vs. Hackley, 20 Wallace 413.
Baily vs. Glover, 21 Wallace 346.

From this it follows that in order to effectually make such distribution, the court in charge should know who the creditors are. At the time of the trial of this cause in the court *a quo*, the current of authority was in favor of the doctrine that secured creditors must prove their debts in the forum of the Bankruptcy. While this has been questioned, I believe that this court has never directly decided this question. At the trial, objection was made to the consideration by the court of the note and pledge offered by the defendant, which objection was overruled and the point saved in a bill of exceptions.

It has been frequently decided that secured creditors should prove their debts.

See *In re* Bridgeman, 1 N. B. R. 312.
In re Henry C. Bolton, do. 370.
In re Biglow & Kellogg, do. 632.
In re Taylor R. Stewart, do, 278.
In re Ruehle, do. 557.
In re Snedaker, 3 do. 629.
Cavis vs. Anderson, 6 do. 579.
In re Grinnell 9 do. 29.
In re Thomas Morrison 10 do. 105.
See also North Carolina Rep., Blum., Ex'r vs. Ellis.

Such would seem to be the fair deductions from the act itself.
See R. S. 5075, 5076; 5077.

If this were not required, a dishonest debtor could securely conceal all his property under cover of fraudulent pledges, and utterly defeat the object of the law. The point made in the court below

was that this defendant had been requested to prove up its debt as a secured creditor and had refused, and hence should not be recognized as a creditor in this action. It may be, however, said that under present decisions this point is not much relied upon in this court, though not abandoned.

Again it is believed that the bankruptcy of O'Fallon & Hatch changed the relation of the parties and raised up new duties on the part of those dealing with the assets of the bankrupt estate. The *fiat* in bankruptcy *fixed* the condition of the parties, and thereafter the property of the bankrupts of every character was in *custodea legis*, and its *managemeut* in the hands of the court in bankruptcy, whose duty was to take immediate steps to protect and save the assets in furtherance of the ends of the law, i. e. the speedy and equal distribution among the creditors.

See R. S. § 5,065, Young vs. Bank of Bengal, L. R. 3 C. P. 444.
Astley vs. Guerney L. R. 4 C. P. 714.

The record shows that the learned judge of the District Court for the Eastern District of Missouri, aware that certain persons in New Orleans, of whom defendant was one, held assets of the estate under a claim of pledge, and that these assets were of a fluctuating character, took prompt steps to save them for the creditors; that he appointed an agent of the court, Leonard Matthews, to receive and sell these assets, reserving at the same time all rights which might be claimed against them, under the pledge, upon distribution; that defendant was notified of the action and wish of the court; that the time to sell had come, and that the court did dot desire to hold such speculative assets and imperil the surplus; that there was at that time a margin over the amount claimed as a lien, and ready sale could be made upon the New Orleans market. It seems plain that under these circumstances,

THIRD. *The law imposed a plaiu duty upon the defendant as pledgee to sell the collaterals and save the margin for the estate.*

1. What were the relations between the parties?

The certificates, although encumbered, were a portion of the estate, and the court certainly had the management of the property

so far as the surplus was concerned. The defendant had due notice of this, and the relation he bore to the court, representing the dual interest of the bankrupt and the unsecured creditors, was that of a sort of mandatary. The Louisiana code provides that whoever undertakes the business of another, though gratuitously, is responsible for any neglect of duty, A. A. 2,971, 2,972.

By article 2,995 every person is responsible for the damage he occasions, not merely by his act, but by his negligence, his imprudence or his want of skill.

Article 2,294 prescribes that "Every act whatever of man, that causes damage to another, obliges him, by whose fault it happened, to repair it."

Under articles 3,132 and 3,135 of the code the pledgee was forbidden to appropriate the pledge to himself.

With these provisions it would seem that if bankruptcy had not intervened, and defendant had been asked at maturity of the debt to sell the collaterials, when a margin could be made by sale, and the defendant refused, it would be liable for the damage.

And it would seem that the principle should apply with greater force in favor of the plaintiffs in this case. The defendant had express notice of the desire of the court in custody of the estate, that a sale should be made at once. His debt was mature; there would have been a handsome margin realized by sale. There was a ready market, the collaterals were of a highly unsteady character. He knew that the court had no authority to speculate upon them, and that the object of the bankruptcy was to distribute the estate among the creditors speedily. His duty to the court and the estate was that of a prudent administrator under the circumstances acting for the best interest of his principal.

See Story on Bailments § 332.

Wharton on Negligence, ed. 1874, § 670, says pawnee must exercise the diligence of a good business man, when in his particular circumstances.

Story says that a pawnee is liable for losses and increments when he has refused or omitted to perform his duty. Story on Bailments, § 334.

Equity will compel a sale by pawnee when it is clear that the property will produce more than enough to satisfy the debt. Story on Bailments, § 320.

Story Eq. Jurisprudence, §§ 1031-32-33—such, says Story, is the civil law, and such is the law of Louisiana.

See Williams v. the Schooner St. Stephen, 2 N. S. p. 24. where the court held "that it results from the contract, that if the debtor has any rights in the thing, he should have the means of enforcing them; and it is the only means of preventing injustice and oppression. If the creditor is not paid, the law makes it his duty to apply to a court of justice, and have the object appraised or sold. If he will do neither, but continue to hold in his possession the collaterals of greater value than his debt, we are satisfied that the debtor or those in his right can compel him to comply with that which the law declared to be his duty to do."

We have seen that the code forbids the creditor to appropriate the pawn. If he were permitted to hold securities of greater value than the debt, until by fluctuations of the market they were reduced below the debt, and then sell them, he could practically appropriate the pawn.

His duty to the pledger is that of *diligens paterfamilias*.

See Hartman v. Bemiss, 16 Louisiana Rep. 145.
Crocker v. Monrose, 18 Louisiana Rep. 556.
The Commercial Bank of New Orleans v. Marten, *et als*, 1 La. Annual, 444.
Godfrey Stancil vs. Gilmore & Henderson, 6 La. Annual, 763.
Evans vs. Hatcher, 10 La. Annual, p. 99.

In Tyler on Usury, p. 610, it is laid down as a general rule of law, that where a person receives bonds and notes for collection as collateral security for a debt, he is bound to use due diligence, and if they are lost through his negligence by the insolvency of the makers, he is chargeable with the amount.

In re Grinnell 9, N. B. R., 137, Judge Blatchford held that where stock was held to secure call loans, the pledgee need not obtain an order of court in bankruptcy to sell the stock pledged, and pay the surplus into court for the benefit of whom it may concern.

See also *In re* Daniel, 13 N. B. R.

In Louisiana, a wrongful assumption of a right over the property of another is a conversion—and all who convert the property of another are in bad faith.

See 7 Louisiana Annual 487, Badilo vs. Tio.
2 do 281, The Draining Co. vs. Lizardi et als.

The refusal, neglect, or omission of defendant to sell when its debt was due, and there was a margin in the collaterals, at the instance of the Missouri court who notified it of the desirability of sale, was a conversion of the surplus at least, for which defendant became liable under the law of Louisiana, and the bankrupt law, to the assignee whose title related back.

In New York it has been held that in such a case the defendant could be held for the highest price on the market up to the day of trial, which the record in this case shows was about sixty-five cents on the dollar.

Under the code practice in Louisiana, there are no distinctions in actions, they are all civil actions, and while Trover is unknown, yet an equitable action for damages in such a case is allowed under the flexible system in that State, wherein the court can grant suitable redress; and it is submitted that upon the facts found there should have been a judgment under any circumstances for the amount of surplus upon the pawn in the hands of the defendant on the 28th day of February, 1872, the date of the demand by the receiver of the court as for a conversion on that day.

It is further suggested that the finding of the court does not show that the act of pledge was recorded C. C. 3125.

GIVEN CAMPBELL,

Attorney for Appellants.

Supreme Court of the United States.

No. 189.

JAMES E. YEATMAN AND JAMES C. MOORE, Assignees in Bankruptcy of J. O'Fallon and Samuel H. Hatch, composing firm of O'Fallon & Hatch, *Plaintiffs in Error.*

VERSUS

NEW ORLEANS SAVINGS INSTITUTION.

Brief on behalf of Defendants in Error.

THOS. ALLEN CLARKE,
Of Counsel.

Clark & Hofeline, Book Printers, 112 Gravier St.

Supreme Court of the United States.

No. 189.

JAMES E. YEATMAN AND JAMES C. MOORE, ASSIGNEES IN BANKRUPTCY OF J. O'FALLON AND SAMUEL H. HATCH, COMPOSING FIRM OF O'FALLON & HATCH, *Plaintiffs in Error.*

VERSUS

NEW ORLEANS SAVINGS INSTITUTION.

Brief on behalf of Defendants in Error.

STATEMENT.

Defendants are pledgees of certain securities issued by the State of Louisiana. They are domiciled in New Orleans. The pledgors were, in Missouri, forced into bankruptcy. By an *ex parte* order of the District Court, there, one Leonard Mathews, was appointed Receiver of bankrupts, Dec 2, 1871, a bond being given for $10,000. He came to New Orleans and demanded the unconditional delivery to him, of said securities held by defendants. They refused, unless amount of debt and interest be paid; but offered to deliver the warrants or have the same sold, provided the amount of the notes representing the debt and interest, was left in the hands of Carl Kohn, Receiver's agent in New Orleans, to be retained there until proof was

filed in the Missouri Court. Subsequently, Mathews obtained an *ex parte* order from the Missouri District Court, authorizing him to sell and transfer all such warrants and certificates *as may be delivered to him for that purpose* by the holders thereof at a stated price, etc. On the receipt of this order, Mathews telegraphed Kohn: "Act as my agent to receive and sell in my name," among other things. This was communicated to Generes, President of defendants, who refused to deliver the warrants unless so much of the proceeds of sale as would pay the debt due defendant was retained here by Kohn, and upon these terms Generes represented that the defendants would proceed to prove the debt.

On the 20th May, 1872, Robert K. Woods, was appointed Assignee of the bankrupts. On the 7th June, an order was entered authorizing him among other things to sell at public or private sale any collaterals belonging to the bankrupt estate, said to be pledged for certain demands against said estate, and now in the possession of persons residing in said State of Louisiana, claiming to be creditors of said estate.

Woods visited New Orleans and demanded of Generes the warrants held by defendants, who refused unless he would pay the debt for which they were held as collateral security, which Woods declined to do.

Subsequently, said Woods gave to Generes a written power to sell the warrants and certificates for cash on the most advantageous terms, a minimum price being fixed. "The amount realized from these

sales to be deposited with the parties holding the pledges, subject to all rights which they have upon said certificates and warrants, and without prejudice to the rights of either party or any party claiming surplus until their respective claims have been proved before a register in bankruptcy and allowed said sale to be made within a reasonable time." Commission allowed to Generes.

Sales could not be made at the limit, and on Aug. 26th, the authority was withdrawn.

In January following, Woods, Assignee, files this suit, the gist of which is, that in refusing the demands of Mathews, Receiver, in January and February preceding, the defendants had *converted* the warrants, etc., and were liable for their then value.

Upon the death of Woods the present plaintiffs were appointed his successors, as Assignees.

Judgment *a qua* for defendants.

Five errors are assigned in the judgment of the Circuit Court.

1st. The first, is general, of error without specification.

2d. The second, is in refusing to reject proof of defendants' debt and pledge, as by bill of exceptions.

3d. The third, in recognizing defendants as creditors, they having refused to prove up their debt in bankruptcy.

4th. The fourth, because the facts and law showed a conversion of the property.

5th. The fifth, a repetition of third in different language.

POINTS.

I.

The defendants held as pledgees, and their rights to possession as such could not be divested by pledgor without payment.

Rev. Code La., 3164. "The creditor who is in possession of the pledge can only be compelled to return it, but when he has received the whole payment of the principal, as well as the interest and costs."

II.

The *Assignee* or Receiver has no greater authority than the debtor they represent.

Partee, Syndic vs. Corning, 9 An. 539.
Gibson vs. Warden, 14 Wall., 250.
Cook vs. Tullis, 18 Wall., 332.
Mitford vs. Mitford, 9 Vesey, Jr., 88.

III.

The Receiver, Matthews, was appointed *ex parte*, and by the terms of his mandate, had no right to demand the pledged securities. He had power *under the order* over none but such warrants "as may be delivered to him for that purpose by the holders thereof."

IV.

A Receiver is not known under the Bankrupt Law.

Such officer could only be appointed in a proceeding in which persons to be affected are made parties.

This appointment was made in the bankrupt proceedings, and could have no effect except as regards the property in the possession of the bankrupts, or such as might be voluntarily delivered. Such was its intent.

V.

The *Assignee* could not by an *ex parte* order require the delivery of a thing pledged. Nor in the bankruptcy by rule.

Smith vs. Mason, 14 Wall., 419.

Marshall vs. Knox, 16 Wall., 551.

Jerome vs. McCarter, 94 U. S., 737.

Eyster vs. Gaff, 91 U. S., 521.

A fortiori, the Receiver.

And stronger still, can neither peremptorily demand the delivery, and on refusal, treat the pledgee as a converter of the pledge.

VI.

The Assignee takes only what the bankrupt had at the date of filing the petition.

Adverse holder to the latter is likewise to former.

Re McKay, 1 Lowell, 346.

Re Griffiths, 1 Lowell, 431.

"The Assignee of a bankrupt is not the Assignee of his creditors. He is not the Assignee of all the judgments, executions, liens, and mortgages, outstanding against the bankrupt's property. He takes only the bankrupt's interest in property; he has no right or title to the interest which other parties have therein, nor any control over the same, farther than is given to him by the Bankrupt Act, as auxiliary to the preservation of the bankrupt's interest for the benefit of his general creditors. It would be absurd to contend that the Assignee in bankruptcy becomes *ipso facto* seized and possessed in entirety as trustee of every article of property in which the bankrupt has any interest or share. This would give him the king's prerogative which brooks not a divided dominion in property in common with a subject."

Judge Bradley, Goddard, Assignee vs. Weaver, 1 Wood's Rep., 260.

Marshall vs. Knox, 16 Wall., 558.

Eyster vs. Gaff, 91 U. S., 525.

The Assignee, by his power given to Mr. Generés, June 22d, 1872, recognized the defendants as pledgees then holding the pledged things, which is inconsistent with conversion in January or February anterior. There was no idea then (in June) of conversion. This is an after thought.

VII.

There is no rule of law requiring the creditor or adverse possessor when assailed, as a condition precedent, in order to defend, to make proof in the bankruptcy proceedings.

The rule as to proof, has relation to dividends of the general fund and in bankruptcy.

The question of proof was not involved in the January and February discussions.

VIII.

The Bill of Exceptions was taken too late. The evidence had been received without objection. Rev. Code of Practice, Art. 483. Pickett vs. Bates, 19 La., 482; Yeatman vs. Erwin, 5 La., 265; 3 An. 627; Eastman vs. Harris, 4 An., 193.

IX.

There is no error in the judgment of the Court *a qua*.

X.

The judgment of the Court *a qua* should be affirmed.

THOS. ALLEN CLARKE,
Of Counsel.